

# VERMONT PUBLIC POWER SUPPLY AUTHORITY

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July 2, 2009

Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street, Drawer 20  
Montpelier, VT 05620-2701

re: docket 7523  
Implementation of Standard Offer Prices for  
Sustainably Priced Energy Enterprise Development  
("SPEED") Resources

and

docket No. 7533  
Establishment of Price for Standard Offer under the  
Sustainably Priced Energy Enterprise Development  
("SPEED") program

Dear Mrs. Hudson:

In accordance with the schedule established at the June 19, 2009 prehearing conference and the Board's memorandum of June 26, 2009, the Group of Municipal Electric Utilities ("GMEU")\* submits the following comments.

Initially, the GMEU respectfully incorporates and restates the concerns expressed in its letter of June 25, 2009, particularly those concerning the Board's authority to import the record from docket 7523 into docket 7533. As noted in those comments, the "noncontested case docket" language applies only to the first phase of review, and not to the subsequent rate setting proceedings. Moreover, Board precedent in renewable project ratemaking recognizes that the appropriate way to proceed is by rule or contested case (*see* Rule 4.100, dockets 4804, 4933 and 5177), and specific components of the Act are required to be implemented "by rule or order." See 30 V.S.A. § 8005(h). Dockets 7523 and 7533 must thus proceed on separate, albeit aggressive, tracks.

The number and complexity of the issues associated with implementation of Act 45, coupled with the short time frame for that implementation, make it vital that effective and committed working groups be convened to address the critical tasks. At the very least, as discussed on June 19<sup>th</sup>, there should be working groups associated with technical/power supply issues and with contract/legal types of issues. Given the number of issues identified by the Board and parties to date, it is likely that there

should be additional working groups, and the GMEU will offer more specific suggestions in this regard after reviewing the filings of other parties.

The comments below will initially address the four areas highlighted in the Board's June 26<sup>th</sup> memorandum, followed by several of the issues addressed in the list attached to that document. With respect to issues on the Board's list and not addressed in this filing, the GMEU will review and evaluate input from other parties and will comment as appropriate in its July 9<sup>th</sup> filing.

### *HIGHLIGHTED ISSUES*

1. *Development of standard offer contract terms.* Initially, it is imperative that any standard offer contracts and/or letters of intent contain appropriate contingencies, including those related to regulatory approval requirements and realistic project milestones. In the early administration and implementation of Board Rule 4.100, misunderstandings surrounding letters of intent for renewable projects led to significant and expensive litigation that imposed costs on many participants, including ratepayers. See, e.g., *In re Department of Public Service*, 157 Vt. 120, 596 A.2d 1303 (1991). Whatever the pricing or other terms of the contracts may ultimately look like, it is essential that all involved with those contracts have a clear and uniform sense of what the contingencies in those contracts mean.

Additionally, the contracts must give substantive consideration to a number of issues, including:

- a. the wheeling issues raised by parties to this proceeding, and responsibility for any wheeling charges should they be incurred;
- b. clear indication of the SPEED facilitator's charges, and any mechanism for altering those charges;
- c. consideration of appropriate security devices, at least with respect to larger projects;
- d. delineation of metering and reporting responsibilities;
- e. inclusion of any electrical safety procedures or requirements to the extent appropriate for specific projects.

2. *Review of the default prices established by Act 45.* This review must be as substantive and transparent as possible given the aggressive timeframe in which it must occur under the Act. Keys to accomplishing this should include:

- a. absence of confidentiality agreements or other vehicles that limit access to information filed by any party to this docket;
- b. full posting on the Board's website or other appropriate place of any comments or communications offered by any party to the Board, as well as any information upon which the Board intends to rely in making its determination;

c. full access by all parties to any available information underlying the legislature's establishment of the initial standard offer prices;

d. to the extent allowed by time constraints, issuance of the Board's conclusions as a proposed decision or other draft form that will allow time for comment on them;

e. issuance of specific findings by the Board relative to its determinations, whether or not such findings are required by the Act or under applicable law.

3. *Establishment of a queuing process.* Unlike the Rule 4.100 process that involved promulgation of avoided costs in decremental units, standard offer rates under the Act do not appear to be subdivided except by technology. Position within the queue may thus not be as critical, except for those projects that are near the end of the 50 mw limit and thus at risk of "falling out" based on utility development, and, of course, for those projects that fall outside of that limit and can make their way in only by attrition. In addressing queuing issues, it appears that the first question that must be answered is whether the legislature intended that certain amounts of each technology be included within the 50 mw ceiling. There is no language in the Act suggesting that this is the case. If the GMEU's conclusion in this regard is correct, the best procedure may be to set a date for project submissions to the SPEED facilitator on a preagreed form, and have the facilitator assign places in the queue by lot. While this is something less than optimal power planning, appropriate milestones in contracts/letters of intent should help weed out those projects that do not move forward with reasonable speed, thereby providing an opportunity for other projects to move within the 50 mw queue.

4. *Determining eligibility of projects.* It is rational and efficient to have the initial eligibility of projects determined by the SPEED facilitator, with any disputes on that score to be resolved by the Board under an expedited procedure. Requiring modest but sufficient information to be provided to the facilitator as part of the "place in the queue" request should flag any issues regarding eligibility at an early stage.

### *ISSUES LIST*

#### *Renewable cost issues.*

One especially fertile source of information and data that should be taken into consideration is the degree of project development that has taken place under the net metering statute and accompanying Board rule. Based on the Board's most recent orders, it appears that the number of net metering dockets is approaching seven hundred. The Board can readily use this data to determine the number of projects brought to life through a program offering a limited retail rate credit, and weigh that against the higher rates and longer term guarantees generally embedded in the legislatively set standard offer prices.

With respect to the hiring of a contractor, a key issue is providing all parties the work product of the contractor, the information on which the contractor relies, and a meaningful opportunity to comment on any conclusions reached by the contractor. Careful attention must also be paid to the costs associated with the hiring of any contractor, so that ratepayer impacts are minimized.

As to the data upon which the Board can rely, GMEU, and undoubtedly many other parties, continue to explore what data is available and the reliability of that data. A public posting of that data, so that it can be accessed and commented upon by all parties, is essential to ensure that rates are developed in the most accurate way possible.

The valuing of tax credits and other support is complex, and GMEU was pleased to see a representative of the Vermont Department of Taxes present at the prehearing conference. While many available credits may be federal in nature, it would be useful to have continued participation from the Department of Taxes. It may also be that the Board could find a contractor who is knowledgeable on this subject as part of his/her overall experience in the field.

Lastly in this regard, some of the Board's more complex questions (granularity of prices, for example) should be more of a focus in docket 7533 than in docket 7523. This separation will enable the parties to focus more fully on the September deadline at the outset.

*Implementation issues.*

As noted in Board issue #9, the utilities receive the RECs associated with all SPEED projects, and it is the GMEU's position that utilities should and must receive all other ancillary benefits from the projects.

GMEU's suggestion is that a small subgroup, including the SPEED facilitator and with appropriate representation by utilities and developers, be convened to analyze and report to the Board on issues 9 through 12. Significant efficiencies will be gained to the extent that the facilitator is able to manage issues pertaining to credits and eligibility, and the Board can and will retain jurisdiction to resolve any disputes that may arise in these areas. In similar fashion, the potential technical subgroup that was discussed at the prehearing conference could formulate recommendations regarding the metering and interconnection issues set forth as # 13 and #14 on the Board's list.

GMEU offers the following additional comments with respect the to Board's implementation-related list:

*Item 15:* GMEU interprets the statute as vesting the Board with responsibility to determine contract length.

*Item 16.* Unless otherwise exempt under the terms of section 248, projects need to apply for a certificate of public good under that section. Nothing in the statute suggests otherwise.

*Item 17.* The Board can only promulgate a simplified procedure to the extent consistent with section 248. The authority to waive section 248 criteria that appears in the net metering statute (see 30 V.S.A. § 219(c)(1)) is not found in the Act.

*Item 19.* It is difficult to discern what eligibility date was intended by the legislature. Subject to reviewing and considering the comments of other parties, September 30, 2009 may fairly reflect the legislative intent, as this date enables the Board to complete its initial rate review and is consistent

with the language in the Act saying that the Board “shall put into effect” standard offers by this date. It is unclear that the Board can establish any specific parameters surrounding this construction season, beyond continuing to expeditiously implement the Act, as well as quickly process any CPG petitions that are filed relative to eligible projects.

*Item 21.* GMEU will work to suggest appropriate standards as part of docket 7533. It does not seem necessary to do so as part of the docket 7523 proceedings.

*SPEED Contract/Facilitator issues.*

*Item 23.* GMEU’s preliminary conclusion is that the statute confers sufficient authority for the SPEED facilitator to enter into contracts with projects eligible for the standard offer, subject to regulatory approval of the contracts and the underlying projects. Such contracts cannot, of course, bind the Board to approve any particular project.

*Item 23.* The VEPPI contracts are not realistic models. The last of those contracts was for a project that began commercial operation in 1992, pursuant to a different statute and a Board Rule that is inapplicable here. Moreover, the VEPPI contracts were substantially altered by the settlement in docket 5270, and, at least to the undersigned’s knowledge, have never been retyped into “clean copy” versions. Attention is better given to creating appropriate contract language for the statute now being implemented.

*Item 25.* Continuing the 50/50 allocation that has been in place for many years is an appropriate starting point.

*Item 27.* This would be a reasonable subject for a technical working group to address.

*Item 28.* As noted at the outset, reasonable milestones and security devices as appropriate are among the contractual provisions that may be necessary to protect ratepayers. It should be noted that it will also be important to “refresh” the rates every two years as provided by the Act.

*Utility settlement and billing.*

*Items 29-33.* These items are all excellent subjects to be addressed by a small working group that includes the SPEED facilitator.

*Item 34.* This item identifies an issue critical to the GMEU; namely, the potential shifting of costs that could be caused by larger utility development. Since this issue is not one that will have immediate impact, GMEU will work actively with other parties to address this issue.

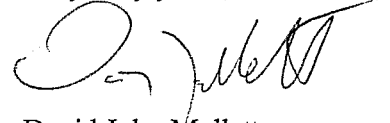
*Other cost and pricing issues.*

Given the complexity and nuances of the issues set forth in items 35 through 46, these should be briefly deferred into docket 7533.

July 2, 2009

Thank you for this opportunity to comment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Mullett', written over a horizontal line.

David John Mullett

cc: service list

\* Barton Village, Inc. Electric Department, Village of Enosburg Falls Water & Light Department, Town of Hardwick Electric Department, Village of Hyde Park, Inc. Electric Department, Village of Jacksonville Electric Company, Village of Johnson, Inc. Water & Light Department, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water & Light Department; Northfield Electric Department, Village of Orleans, Inc. Electric Department, Town of Readsboro Electric Light Department, Swanton Village, Inc. Electric Department